

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**RECEIVED**

APR - 8 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of the )  
Application Of Verizon New Jersey, Inc., )  
Bell Atlantic Communications, Inc., NYNEX )  
Long Distance Company, Verizon Global )  
Networks, Inc. and Verizon Select Services, Inc. )  
For Authorization To Provide In-Region )  
InterLATA Services in the State of New Jersey )

CC Docket No. 02-67

**COMMENTS OF ALLEGIANCE TELECOM OF NEW JERSEY, INC.**

Allegiance Telecom of New Jersey, Inc. ("Allegiance"), by counsel, hereby submits its comments on the renewed application of Verizon New Jersey, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, Verizon Global Networks, Inc. and Verizon Select Services, Inc. ("Verizon") for authority to provide in region interLATA service in the state of New Jersey. While Allegiance commends Verizon for voluntarily reducing its non recurring charge for hot cuts to \$35.00, it takes issue with Verizon's contention that its "performance in providing the various checklist items has been excellent"<sup>1</sup> and submits that Verizon has not yet earned the right to offer long distance service in New Jersey.

Allegiance is a facilities-based local exchange carrier ("CLEC") providing service in Verizon's territory in Northern New Jersey. Allegiance delivers service to its customers using a combination of its own switching facilities and unbundled loops purchased from Verizon. Section 271(c)(2) of the Communications Act provides that a

<sup>1</sup> Supplemental Filing of Verizon New Jersey at 3.

Bell Operating Company meets the statutory requirements for entry into the long distance market only where it is providing nondiscriminatory access and interconnection to its network in accordance with the 14 point Competitive Checklist. Further, pursuant to Section 271(d)(3), a Bell Operating Company must show that a grant of its application for long distance authorization is consistent with the public interest, convenience and necessity. As demonstrated below, Verizon continues to place obstacles in the pathways of competitors attempting to gain a toehold in the New Jersey local telecommunications market. Verizon has failed to pass either the Competitive Checklist test or the public interest and for these reasons, the Commission must deny its application.

**I. Verizon Has Not Demonstrated Compliance With Checklist Item 2**

Competitive Checklist Item 2 requires that Verizon demonstrate that it is providing nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). Verizon does not provide nondiscriminatory access to unbundled loops in New Jersey. On the contrary, Verizon rejects an inordinate number of UNE loop orders on the grounds that “no facilities” are allegedly available. This practice forces CLECs to either inform customers that they cannot provide service as anticipated or, alternatively, to purchase the necessary circuits out of Verizon’s special access tariffs at retail rates that are not cost-based.

Allegiance is dependent upon Verizon to provide the “last mile” loop facilities it needs to reach its end users. The vast majority of the customers Allegiance serves are already receiving POTS service from Verizon so the physical facilities to serve these

customers are already in place. Nonetheless, Allegiance and other CLECs<sup>2</sup> have become increasingly frustrated in their ability to provide timely service to end users because of Verizon's liberal use of the "no facilities" excuse to avoid providing access to UNE loops. Allegiance's operating affiliates provide facilities-based service in 36 markets across the country and have had experiencing in ordering UNE loops from each of the Bell Operating Companies. Verizon occupies a unique position among the other BOCs in the number and variety of circumstances it characterizes as "no facilities" for purposes of denying CLECs access to unbundled loops.

To illustrate, Verizon has rejected Allegiance UNE DS0 loop orders for "no facilities" because a feeder was temporarily "congested" despite the fact the feeder was scheduled to be cleared within a week. Verizon also rejects UNE loop orders for "no facilities" where the addition of a line card or simple electronics would render the loop useable by a CLEC. To the extent that Verizon makes similar minor adjustments to accommodate its own retail customers' requests for service, its refusal to make equivalent adjustments to accommodate CLEC requests for unbundled loops is clearly discriminatory.

Unlike the other BOCs, when Verizon electronically rejects a UNE DS0 loop order for "no facilities," it refuses to give CLECs the reason behind the "no facilities" rejection or provide a date by which facilities are expected to be available. As a result, CLECs are forced to continuously issue new orders for the customer facility or repeatedly call Verizon to try to get information on the status of the facility situation.

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<sup>2</sup> See, Comments of XO Communications, Inc. in CC Docket No. 01-347 (filed January 14, 2002) at 15-17.

When Verizon rejects UNE T1 orders for “no facilities,” it recommends that CLECs cancel their UNE orders and reissue orders for special access circuits if they really want the facilities. Between December 14, 2001 and February 26, 2002, Verizon rejected 53 Allegiance orders for UNE T1s in New Jersey on the grounds of “no facilities,” but was happy to accept special access orders for the same customers. In many cases, Verizon could have installed a minor piece of equipment that would have made the circuits useable by Allegiance. For example, Verizon rejects UNE T1 orders claiming “no facilities” where there is (1) no repeater shelf in the central office, customer location or remote terminal; (2) no apparatus or doubler case; or (3) a shelf on a multiplexer that needs to be turned up. Again, these are relatively minor adjustments that Verizon would routinely make for its retail customers to ready T1s for use, but refuses to make for its CLEC UNE customers.

Verizon’s practice of forcing CLECs to substitute special access facilities for UNE facilities, which Allegiance often has no choice but to accept so that it can fulfill existing customer demand, significantly delays turn up of the customer’s service and raises Allegiance’s costs considerably. The installation delays not only inconvenience Allegiance’s customers, but also prompt some customers to cancel their orders with Allegiance. Moreover, as the Commission is well aware, special access rates are not required to be cost-based and far exceed the TELRIC-based UNE rates to which CLECs are entitled under Sections 251 and 252 of the Act.

To compound the problem, Verizon often contacts Allegiance customers directly after Allegiance places an order for a UNE facility. Verizon describes these direct contacts as necessary for the purpose of determining whether facilities are available to fill

the customer's order. Where Verizon determines that no facilities are available to fill the customer's order, it so informs the customer and frequently maintains direct contact with the customer to provide status updates, while refusing to provide the same information to Allegiance. Although it is Allegiance that places the order with Verizon for the UNE facility, Verizon will communicate only with Allegiance's customer on the status of available facilities. There is no justification for Verizon's behavior other than to try to undermine the customer's confidence in Allegiance's ability to provide service.

Verizon's failure to provide nondiscriminatory access to UNE loops at cost-based rates is a fundamental violation of Verizon's duties under Sections 251 and 252 of the Act and precludes a finding that Verizon has met its market opening obligations under Section 271 of the Act. The Commission should not grant Verizon's application until it is able to show that it rejects retail customers' POTS and T1 orders for "no facilities" with the same frequency and on the same bases that it rejects CLEC orders for UNE DS0 and T1 loops.

## **II. Grant of Verizon's Application Will Not Serve the Public Interest**

The Commission must make an affirmative finding that Verizon's entry into the long distance market is consistent with the public interest. The Commission has acknowledged that the overriding goal of reviewing a Section 271 application for compliance with the public interest standard is to ensure that nothing undermines a possible conclusion that the local telephone market is open to competition. As the Commission stated in the Arkansas/Missouri 271 Order,

The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be

open, as required by the competitive checklist, and that entry will therefore serve the public interest, as Congress expected.<sup>3</sup>

Relevant to the Commission's analysis of whether the New Jersey market is open to competition is a letter dated November 29, 2001 that Allegiance received from an end user and has attached hereto as Exhibit 1. As the letter details, this end user had signed up for Allegiance's local telephone service but canceled the order prior to the lines being moved to Allegiance's service because of actions taken by Verizon. These actions, which the customer characterized as making "legitimate competition impossible," led the customer to cancel its order with Allegiance due to a fear that switching its lines from Verizon would entail lengthy service interruptions. Specifically, the customer states:

As you know, one time we authorized you to switch the referenced telephone lines to your company. We subsequently called you to cancel that order. This is an explanation for why we cancelled that order.

We have another line (our DSL line) which was never intended to be transferred to your company by us or by you. Somehow, Verizon, our previous and present provider for all lines, cancelled our DSL service. It was an impossibly cumbersome matter to find out what had happened with Verizon, and to get them to correct the problem. It took 3 days of my time. *At first Verizon insisted that we either had given the DSL line to your company, or that the DSL line had been "slammed" by your company. Neither was true. Sparing you all of the details, it became clear to me that there was no way to change our local service to your company without service interruption and frustrating and lengthy time involvement with Verizon. That is why I cancelled our order with your company.*

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<sup>3</sup>*Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Arkansas and Missouri, CC Docket 01-194, Memorandum Opinion and Order, FCC 01-338 (released November 16, 1991) at ¶124 – 125.*

*The difficulties we experienced with Verizon, in my opinion, made legitimate competition impossible.* I have to wonder whether this was their underlying intent.

So far as I can tell, your company did nothing wrong, and was victimized by Verizon.

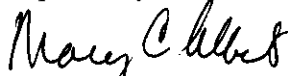
See Exhibit 1 (emphasis added).

This testimonial is a stinging indictment of the subtle and not so subtle ways that Verizon uses to keep its competitors at bay. When Verizon's efforts to thwart competition are so obvious even to end users, the Commission cannot possibly conclude that the local telephone market in New Jersey is open to competition or that Verizon's entry into the long distance market is warranted under Section 271 of the Act.

**Conclusion**

For the foregoing reasons, the Commission should deny Verizon's application to provide interLATA service in New Jersey.

Respectfully submitted,



Mary C. Albert  
Vice President Regulatory and Interconnection  
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April 8, 2002

**EXHIBIT 1**



11/29/01 17:44 FAX 12016727241

NJ ALLEGIANCE TELECOM #

0002

FROM :

FAX NO. : 973-994-0766

Nov. 29 2001 03:31PM P1

**DYNATHERM CORP./REPRESENTING THE MANUFACTURER****OFFICES: 107 EAST MOUNT PLEASANT AVENUE - LIVINGSTON, NJ 07039**  
**MAILING ADDRESS: P.O. BOX 280 - LIVINGSTON, NEW JERSEY 07039****HEATING - VENTILATING - AIR CONDITIONING****TEL: 973-994-1810****FAX: 973-994-0766****November 29, 2001****Allegiance Telecom, Inc.**  
**9201 North Central Expressway**  
**Dallas, Texas 75281****Attention: Mr. Kenny Tuosto****Reference: Dynatherm Corp. A/C #508738**  
**Telephone Nos. 973-994-1810, 973-994-1811,**  
**973-994-3572, 973-994-4515****Dear Mr. Tuosto:**

As you know, one time we authorized you to switch the referenced telephone lines to your company. We subsequently called you to cancel that order. This is an explanation for why we cancelled that order.

We have another line (our DSL line) which was never intended to be transferred to your company by us or by you. Somehow, Verizon, our previous and present provider for all lines, cancelled our DSL service. It was an impossibly cumbersome matter to find out what had happened with Verizon, and to get them to correct the problem. It took 3 days of my time. At first Verizon insisted that we either had given the DSL line to your company, or that the DSL line had been "slammed" by your company. Neither was true. Sparring you all of the details, it became clear to me that there was no way to change our local service to your company without service interruption and frustrating and lengthy time involvement with Verizon. That is why I cancelled our order with your company.

11/29/01 17:45 FAX 12016727241

NJ ALLEGIANCE TELECOM #

FAX NO. : 973-994-0766

Nov. 29 2001 03:31PM P2

0003

0003

**DYNATHERM CORP./REPRESENTING THE MANUFACTURER**

OFFICES: 107 EAST MOUNT PLEASANT AVENUE - LIVINGSTON, NJ 07039  
MAILING ADDRESS: P.O. BOX 380 - LIVINGSTON, NEW JERSEY 07039

**HEATING - VENTILATING - AIR CONDITIONING**

TEL: 973-994-1810

FAX: 973-994-0766

Mr. Kenny Tuosto  
Allegiance Telecom, Inc.

Page Two

The difficulties we experienced with Verizon, in my opinion, made legitimate competition impossible. I have to wonder whether this was their underlying intent.

So far as I can tell, your company did nothing wrong, and was victimized by Verizon.

Very truly yours.

DYNATHERM CORP.

J. Zandman

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April 2002, a copy of the foregoing Comments of Allegiance Telecom of New Jersey, Inc. was served by first class U.S. Mail, postage prepaid, on the following:

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